UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/838,142	04/20/2001	Raymond E. Suorsa	200704486-1	9523

22879   7590   02/01/2010
HEWLETT-PACKARD COMPANY
Intellectual Property Administration
3404 E. Harmony Road
Mail Stop 35
FORT COLLINS, CO 80528

EXAMINER
CHANKONG, DOHM

ART UNIT	PAPER NUMBER
2452	

NOTIFICATION DATE	DELIVERY MODE
02/01/2010	ELECTRONIC

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JERRY.SHORMA@HP.COM
ipa.mail@hp.com
laura.m.clark@hp.com

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

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Ex parte RAYMOND E. SUORSA, HAROLD POSKANZER,
GLENN FERGUSON, and JOSHUA T. LEVASSEUR

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Appeal 2009-001386
Application 09/838,142
Technology Center 2400

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Decided: January 28, 2010

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Before LANCE LEONARD BARRY, JAY P. LUCAS, and
THU A. DANG, *Administrative Patent Judges.*

BARRY, *Administrative Patent Judge.*

DECISION ON APPEAL

STATEMENT OF THE CASE

The Patent Examiner rejected claims 32-38. The Appellants appeal
therefrom under 35 U.S.C. § 134(a). We have jurisdiction under 35 U.S.C.
§ 6(b).

INVENTION

The invention at issue on appeal automatically provisions servers and other computing devices that provide support for sites that are hosted on the Internet, intranets, and other communication networks. (Spec. 1.)

ILLUSTRATIVE CLAIM

32. A method for executing commands in a system having a database, a plurality of devices remote from the database and a gateway that provides a communications interface between said remote devices and said database, comprising the following steps:

storing a queue in said database containing a sequence of commands to be executed;

retrieving, at said gateway, a command from the queue and transmitting the retrieved command from the gateway to an agent running on at least one of said remote devices, for execution on said one device;

at said gateway, receiving a message from the agent reporting the results of the execution of the command;

retrieving, at said gateway, the next command from the queue in response to receipt of said message, and transmitting said retrieved next command to the agent for execution;

in response to receiving a message at the gateway from the agent reporting the results of the execution of at least one command, transmitting a command from the gateway to the agent on the remote device to initiate a reboot process;

placing the queue in a reboot status in response to the initiation of the reboot process;

retrieving at the gateway a message from the agent indicating the completion of the reboot process at the remote device;

removing the queue from reboot status in response to said message, and checking at the gateway whether any commands remain in the queue that have not yet been completed; and

resuming the step of retrieving commands in the queue and transmitting them to the agent if uncompleted commands are determined to be present in the queue.

PRIOR ART

| Gonda | US 6,662,221 B1 | Dec. 9, 2003 |
| Suzuki | US 6,816,964 B1 | Nov. 9, 2004 |

REJECTIONS

Claims 32-33 and 36-38 stand rejected under 35 U.S.C. § 102(e) as anticipated by Suzuki.

Claims 34 and 35 stand rejected under 35 U.S.C. § 103(a) as obvious over Suzuki and Gonda.

ISSUE

The Examiner finds that "Sukuzi has disclosed . . . storing a queue in said database containing a sequence of commands to be executed (figure 1, item 11) . . . ." (Ans. §(9) 2.[1]) The Appellants argue that "the broadest reasonable interpretation of 'queue' would not included [sic] the execution script of Suzuki." (App. Br. 13.) Therefore, the issue before us is whether

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[1] The Examiner omits page numbers from his Answer. We encourage him to number the pages of his future examiner's answers to facilitate more precise citations thereto.

the Appellants have shown error in the Examiner's finding that Suzuki discloses a queue containing a sequence of commands to be executed.

LAW

"[T]he words of a claim 'are generally given their ordinary and customary meaning.'" *Phillips v. AWH Corp.*, 415 F.3d 1303, 1312 (Fed. Cir. 2005) (en banc) (internal citations omitted). The "ordinary and customary meaning of a claim term is the meaning that the term would have to a person of ordinary skill in the art in question at the time of the invention, i.e., as of the effective filing date of the patent application." *Id.* at 1313.

"It is axiomatic that anticipation of a claim under § 102 can be found only if the prior art reference discloses every element of the claim, and that anticipation is a fact question . . . ." *In re King*, 801 F.2d 1324, 1326 (Fed. Cir. 1986) (citing *Lindemann Maschinenfabrik GMBH v. Am. Hoist & Derrick Co.,* 730 F.2d 1452, 1457 (Fed. Cir. 1984)).

FINDINGS OF FACT ("FFs")

1. Claim 32 claim recites in pertinent part the following limitations: "storing a queue in said database containing a sequence of commands to be executed . . . ."

2. A definition of the term "queue" follows.

> A multi-element data structure from which (by strict definition) elements can be removed only in the same order in which they were inserted; that is, it follows a first in, first out (FIFO)

constraint. There are also several types of queues in which
removal is based on factors other than order of insertion-for
example, some priority value assigned to each element.

Microsoft Computer Dictionary 368 (4th ed. 1999).

3. Suzuki's "FIG. 1 shows a server (managing apparatus) 100 and
clients (data processing apparatuses) 200a, 200b, . . . , 200n which are
connected via a local area network (LAN) 300 to construct a remote loading
execution system . . . ." (Col. 6, ll. 38-41.) The Figure follows.

FIG. 1
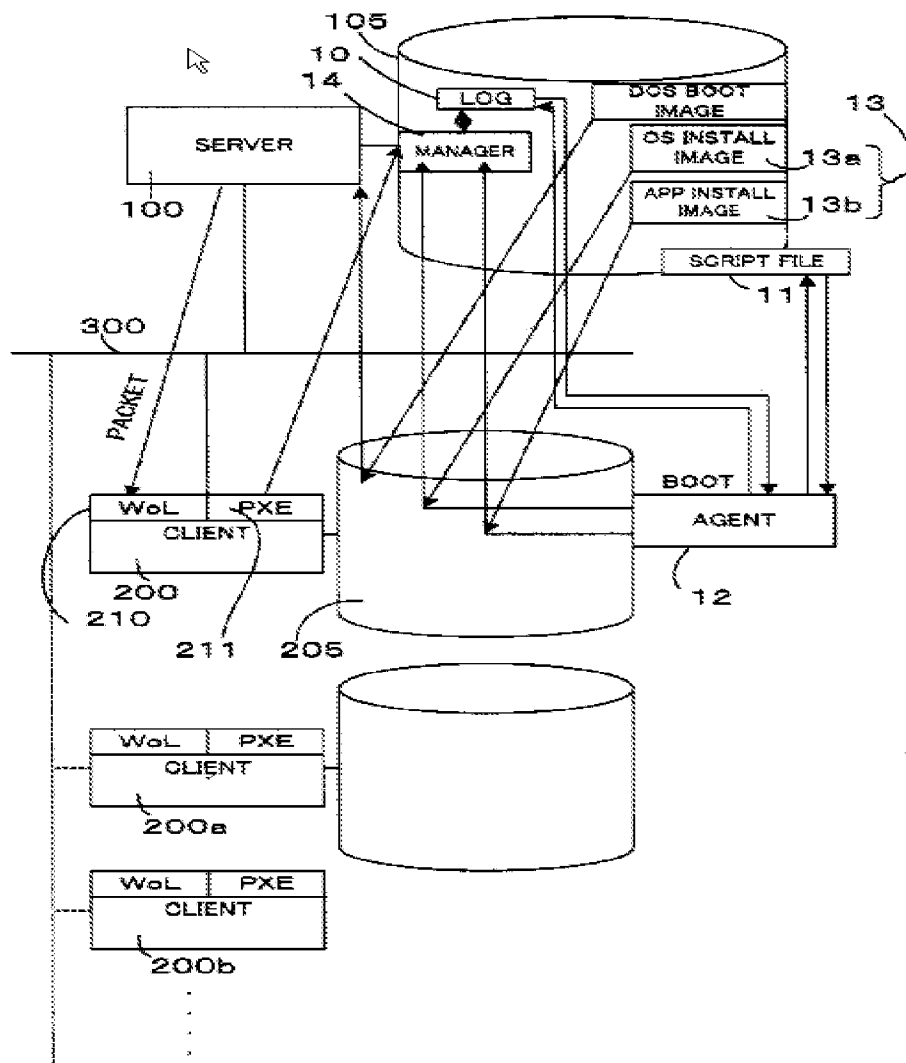
Again, Figure 1 shows the reference's remote loading execution system.

4. "[T]he server 100 comprises a CPU 102, a RAM 103, a ROM 104, [and] a HDD (hard disk drive) 105 . . . ." (*Id.* at ll. 44-45.) Suzuki describes the function of the HDD as follows

> The HDD 105 stores therein . . . a managing record file (log file) 10 for-recording an execution state of installation into the client 200, a script file 11, i.e. a control file, storing therein an execution script S, i.e. execution control information, which prescribes an execution process of installation into the client 200, an agent 12 for executing installation into the client 200 according to the execution script S stored in the script file 11, and install files 13 to be installed into the client 200.
>
> The execution script S is definition information setting execution commands (setup commands) necessary for installation into the client 200, which is read and executed by the agent 12 in the client 200. The execution script S sets the setup commands in order of the install files 13 to be set up.

(*Id.* at ll. 51-65.)

5. "The server 100 is further provided with a program which is read from the HDD 105 and executed by the CPU 102. This program includes a manager 14 for managing reading and writing (including updating) of the managing record file 10 and reading of the script file 11." (Col. 7, ll. 18-22.)

ANALYSIS

Claim 32 claim requires a queue containing a sequence of commands to be executed. (FF 1.) A person of ordinary skill in the art in question at

the time of the Appellants' invention would have understood a queue to be a multi-element data structure from which elements are removed. (FF 2.)

Suzuki's system includes a server (FF 3) featuring a HDD (FF 4). For its part, the HDD stores therein a file containing an execution script S. (*Id.*) Because the script is "definition information setting execution commands (setup commands)" (*id.* (quoting Suzuki, col. 6, ll. 60-62)), it appears to constitute a sequence of commands to be executed.

We are unpersuaded, however, that the reference's script anticipates the claimed queue. Rather than constituting a multi-element data structure, we view the script as (command) data. Furthermore, although elements are removed from a queue (FF 2), Suzuki's commands are instead read from the script file (FF 5).

The absence of a queue containing a sequence of commands to be executed negates anticipation. Furthermore, the Examiner does not allege, let alone show, that the addition of Gonda cures the aforementioned deficiency of Suzuki.

CONCLUSION

Based on the aforementioned facts and analysis, we conclude that the Appellants have shown error in the Examiner's finding that Suzuki discloses a queue containing a sequence of commands to be executed.

DECISION

We reverse the rejections of claims 32-38.

<u>REVERSED</u>

rwk

HEWLETT-PACKARD COMPANY
Intellectual Property Administration
3404 E. Harmony Road
Mail Stop 35
FORT COLLINS CO 80528